



# **Lessons Learned in State TRO Proceedings**



## >> Key Learnings

- **Clear, consistent rules and definitions that use readily available data in their application are essential**
  - Parties used comments in un-related subsections of the TRO to create arbitrary application of the Commission's rules
  - The data needed to demonstrate no impairment is held almost solely by the parties who stand to "lose" the most from a "no impairment" finding
  - States did not consistently hold competitive carriers/third party providers accountable for supplying data necessary for a complete analysis
- **Impairment tests did not fully consider the impact of technology**
  - Bandwidth test for loop/transport
  - VoIP and wireless substitution for mass market
- **FCC should determine the market definition based on how network competitors actually enter in the marketplace**
- **CLECs used impairment proceedings to protect their profits rather than test actual impairment.**

# >> Switching Impairment Case

- **CLEC switch reach was far greater than anticipated**
  - CLECs extended Points of Interconnection from their “host” to other geographic areas, increasing efficiency of capital investment
- **CLECs did not dispute actual deployment, but focused on interpretation of definitions**
  - “Enterprise” vs. “Mass Market” switch
  - Thresholds
- **Mass Market test did not account for the arbitrage created by state-ordered UNE prices**
  - Deployed, operational CLEC switches sit mostly idle because CLECs enjoyed greater profits through artificially low UNE-P, or even resale rates
- **Loop-based competition works well for CLECs who actually execute on this strategy**
  - Affidavit and testimony filed in state proceedings proves this

## >> Fiber Facts

- In BellSouth's top 20 MSAs (a subset of top 100 MSAs nationally) at least 4 CLECs are operating competitive networks. This includes markets as small as Jackson, MS, and Chattanooga, TN
- In BellSouth's region:
  - More than 2,200 buildings are served by non-ILEC fiber
  - Nearly 30% of those 2,200+ buildings are served by multiple CLECs providing fiber-based services
  - CLEC fiber runs past thousands more buildings that could easily be served by the fiber
- CLECs are using special access broadly to serve end users. For example, approximately 40,000 DS1 lines in Florida are purchased by CLECs to serve end users



## >> **Transport Impairment Case**

- **Bandwidth-based test for loop/transport is not reflective of actual competitive deployment**
  - Where fiber is deployed, CLECs have the ability to provide DS1 and above bandwidth services through multiplexing
- **Definitional hurdles:**
  - Bandwidth-based test for loop/transport is not reflective of actual competitive deployment or impairment
  - Perceived discrepancies in the Rules vs. Order
- **The data needed to demonstrate no impairment is held by the parties who stand to “lose” the most from a “no impairment” finding**
  - Parties denied having facilities along a particular route when third party data reflects it exists
  - States did not consistently hold competitive carriers/third party providers accountable for supplying data necessary for a complete analysis
- **A significant amount of third-party fiber has been deployed in key metros**



## Example Competitive Fiber Placement – Downtown Atlanta







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## >> Conclusions

- **State records are incomplete**
  - Due to timing of the vacatur, proceedings were held in abeyance
  - Where the complete case has been filed, the data is incomplete in many instances because competitive facility providers were not compelled to participate
- **Tests based on objective correlation and readily available sources alleviate data disputes**
- **Alignment between rules and text of any Order focuses on the issue of impairment rather than interpretation**